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Attorneys for Defendant
WIZARDS OF THE COAST LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 ADAM SHAW, PETER
12 GOLIGHTLY, JUSTIN TURNER,
13 and JOSHUA STANSFIELD, as
14 individuals and on behalf of others
similarly situated and the general
public,

15 Plaintiffs,

16 vs.

17 WIZARDS OF THE COAST, LLC,

18 Defendant.

Case No. 5:16-cv-01924-EJD

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**REPLY IN SUPPORT OF
DEFENDANT WIZARDS OF THE
COAST LLC'S MOTION TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT
PURSUANT TO FRCP RULE 12(b)(6)**

DATE: September 20, 2018
TIME: 9:00 a.m.
CTRM: 4, 5th Floor

Complaint Filed: April 12, 2016
Trial Date: None

REPLY IN SUPPORT OF MOTION TO DISMISS

Defendant WIZARDS OF THE COAST LLC’s (“Wizards”) moving papers explain, in great detail, why Plaintiffs have failed to adequately state a claim for relief with respect to any of the causes of action in their Second Amended Complaint. [Dkt. No. 75.] On July 3, 2018, Plaintiffs submitted a purported “opposition” to Wizards’ Motion to Dismiss. [Dkt. No. 76.]

Notably, Plaintiffs do not actually oppose any of the substantive arguments or legal authority presented by Wizards in the Motion to Dismiss. [See generally, Dkt. No. 75.] As a result, Plaintiffs effectively concede the validity of Wizards' arguments. *Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197, 1210 & n.7 (N.D. Cal. 2013); see also *Qureshi v. Countrywide Home Loans, Inc.*, No. 09-4198, 2010 WL 841669, at *6 n. 2 (N.D.Cal. Mar. 10.2010) (deeming plaintiff's failure to address, in opposition brief, claims challenged in a motion to dismiss, an "abandonment of those claims") (citing *Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 n. 4 (9th Cir.2005)); *Sportscare of America, P.C. v. Multiplan, Inc.*, 2011 WL 589955, at *1 (D.N.J. Feb. 10, 2011) ("In most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue."); *Scott v. City of Phoenix*, 2011 WL 3159166, at *10 (D.Ariz. Jul. 26, 2011) (failure to oppose statute of limitations argument constituted waiver); *Foster v. City of Fresno*, 392 F.Supp.2d 1140, 1147 n. 7 (E.D.Cal.2005) ("failure of a party to address a claim in an opposition to a motion for summary judgment may constitute a waiver of that claim."); *In re Online DVD Rental Antitrust Litig.*, 2011 WL 5883772, at *12 (N.D.Cal. Nov. 23, 2011) (absent unusual circumstances, failure to respond to argument on merits "viewed as grounds for waiver or concession of the argument"); *Mariscal v. Graco, Inc.*, 52 F. Supp. 3d 973, 984 (N.D. Cal. 2014).

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1 Based on the foregoing, Wizards respectfully requests that the Court grant
2 its Motion and dismiss the first through tenth causes of action in Plaintiff's SAC.
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4 DATE: July 13, 2018

FISHER & PHILLIPS LLP

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6 By:/s/ Shaun J. Voigt _____
7 KARL R. LINDEGREN
8 SHAUN J. VOIGT
9 CATHARINE MORISSET
10 Attorneys for Defendant,
11 WIZARDS OF THE COAST LLC
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PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of FISHER & PHILLIPS LLP and my business address is 444 S. Flower Street, Suite 1500, Los Angeles, CA 90071.

On July 13, 2018, I served the foregoing document entitled **REPLY IN SUPPORT OF DEFENDANT WIZARDS OF THE COAST LLC'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT PURSUANT TO FRCP RULE 12(b)(6)**, on all the appearing and/or interested parties in this action as follows:

SEE ATTACHED MAILING LIST

9 **[by MAIL]** I am readily familiar with the firm's practice of collection and
10 processing correspondence for mailing. Under that practice it would be
11 deposited with the U.S. Postal Service on that same day with postage thereon
12 fully prepaid at Los Angeles, California in the ordinary course of business.
13 I am aware that on motion of the party served, service is presumed invalid if
14 postage cancellation date or postage meter date is more than one day after
15 date of deposit for mailing this affidavit.

16 **[by ELECTRONIC SUBMISSION]** - I served the above listed
17 document(s) described via the United States District Court's Electronic
18 Filing Program on the designated recipients via electronic transmission
19 through the CM/ECF system on the Court's website. The Court's CM/ECF
20 system will generate a Notice of Electronic Filing (NEF) to the filing party,
21 the assigned judge, and any registered users in the case. The NEF will
22 constitute service of the document(s). Registration as a CM/ECF user
23 constitutes consent to electronic service through the court's transmission
facilities.

24 **[by PERSONAL SERVICE]** I caused to be delivered by messenger such
envelope(s) by hand to the office of the addressee(s).

25 **[by FEDERAL EXPRESS]** I am readily familiar with the firm's practice
26 for collection and processing of correspondence for overnight delivery by
27 Federal Express. Under that practice such correspondence will be deposited
28 at a facility or pick-up box regularly maintained by Federal Express for
29 receipt on the same day in the ordinary course of business with delivery fees
30 paid or provided for in accordance with ordinary business practices.

31 **FEDERAL** - I declare that I am employed in the office of a member of the
32 bar of this Court at whose direction the service was made.

Executed on **July 13, 2018**, at Los Angeles, California.

MELODY BIGLAY

Print Name

By: /s/ *Melody Biglay*

Signature:

1 MAILING LIST

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